

The Commonwealth of Massachusetts
Department of Telecommunications and Energy
Cable Division

TRANSFER BULLETIN 99-3

June 18, 1999

To the Issuing Authorities licensed to MediaOne:

As you may know, AT&T has agreed to purchase cable franchises in the Massachusetts communities currently held by MediaOne, including those recently transferred, or currently in the process of being transferred, from Time Warner Cable and Cox Communications. These acquisitions, all of which constitute either a legal assignment or transfer of control of the affected franchises, are subject to issuing authority approval. Through this Bulletin, the Massachusetts Department of Telecommunications and Energy's Cable Television Division ("Cable Division" or "Division") informs communities of the transfer process and public hearing requirements under state and federal law.

The transfer process begins when your community receives a transfer application, also known as a Federal Communications Commission Form 394, which provides detailed information on the proposed transfer. The receipt of the Form 394 triggers a maximum 120-day period during which an issuing authority must review, evaluate and render a decision on the proposed transfer. 47 U.S.C. sec. 537. As part of its review, the issuing authority must hold a public hearing within 60 days of the receipt of the Form 394. 207 CMR 4.03. To satisfy the public hearing requirement, your community must hold an individual public hearing, conducted subject to the Cable Division's procedural rules in addition to any local rules that may apply. The Cable Division's rules require notice of the hearing to be published in a newspaper of general circulation in the affected city or town in each of two successive weeks, the first publication being not less than 14 days before the day of any such hearing. 207 CMR 2.02. The issuing authority is responsible for providing the location and legal notice of the hearing and conducting the hearing.

Pursuant to state law, "[n]o license or control thereof shall be transferred or assigned without the prior written consent of the issuing authority, which consent shall not be arbitrarily or unreasonably withheld. Such consent shall be given only after a hearing upon a written application therefor on forms to be prescribed by the division." G.L. c. 166A, sec. 7. Under the Cable Division's regulations, the legal standard that applies to approving or denying the transfer is quite narrow. 207 CMR 4.04(1)(a)-(d). The issuing authority may consider "*only* the transferee's (a) management experience, (b) technical expertise, (c) financial capability and (d) legal ability to operate a cable system under the existing license." *Id.* Furthermore, under federal law, the transfer is deemed approved if the issuing authority takes no action within 120 days of the receipt of the transfer application. 47 U.S.C. sec. 537.

The Cable Division has recognized the burden that this transfer process places on municipal governments. In addition, cable operators have represented to us that the number of hearings they are required to attend during the transfer process prohibits their having the most knowledgeable and experienced company representatives present at each hearing to respond to questions. Under limited circumstances and upon request, the Cable Division has waived the requirement that an issuing authority hold an individual hearing to consider a transfer application. For example, the Cable Division has arranged regional public hearings conducted by a special magistrate for license transfers involving a large numbers of communities. The regional public hearing process is especially useful during summer months when scheduling conflicts create a more onerous burden on issuing authorities. The special magistrate, designated by the Cable Division, is responsible for presiding over the hearings, collecting and evaluating information received during the process, and making *non-binding* recommendations to all participating issuing authorities. Issuing authorities must ultimately consider the application and make a decision on whether or not to approve the transfer.

We anticipate that AT&T and MediaOne will request that the Cable Division arrange a regional hearing process to review the transfer application. If we approve any such request, we would provide all affected communities with more specific information about the regional transfer process, including dates and locations of the regional hearings. After reviewing the Cable Division's regional transfer hearing structure, the issuing authorities would be given the opportunity to "opt-out" of this process by notifying the Cable Division. Any community "opting-out" of the Cable Division's regional hearing process would be responsible for conducting its own public hearing in accordance with the Cable Division's procedural rules. Those communities that did not "opt-out" of the Cable Division's regional transfer process would be deemed to be participants in the regional transfer process. Those issuing authorities participating in the regional hearing process by attending any of the regional hearings and reviewing the special magistrate's report would satisfy the public hearing requirement found in Section 7 of G.L. c. 166A.

We look forward to assisting each community as it moves through the transfer process. Please do not hesitate to contact us if you have questions. For further information about the license transfer process, please call Gordon Champion, Municipal Liaison, or Peter Corea, Assistant General Counsel, toll free at 888-622-2588. You may also e-mail us at Mccable@state.ma.us.